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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 19, 2000

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE990349

Ex Parte: In the matter concerning
participation of incumbent electric utilities
in regional transmission entities

FINAL ORDER

This Order promulgates regulations governing incumbent electric utilities' transfer of the ownership or control of transmission assets, or entitlements thereto, to regional transmission entities ("RTEs"). Sections 56-577 and 56-579 of the Virginia Electric Utility Restructuring Act ("the Act"), Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia, require Virginia's incumbent electric utilities to (i) join or establish RTEs by January 1, 2001, and (ii) seek authorization from the State Corporation Commission ("Commission") to transfer their transmission assets to such RTEs.¹

¹ Specifically, § 56-577 A states in pertinent part that: "[O]n or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.

The Commission is directed by § 56-579 B of the Code of Virginia to adopt rules and regulations, with appropriate public input, establishing elements of RTE structures essential to the public interest. These elements are to be applied by the Commission in determining whether to authorize the transfer of control of incumbent utilities' transmission assets to RTEs. The Commission is also directed by § 56-579 A 2 to develop rules and regulations under which incumbent electric utilities owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, may transfer all or part of such control, ownership, or responsibility to an RTE upon certain terms and conditions that the Commission determines will comply with § 56-579 A 2 of the Act.

On May 26, 1999, the Commission entered an order establishing an investigation and inviting comments by stakeholders and interested parties concerning the requirements of §§ 56-577 and 56-579 of the Act described above. The Commission initiated that proceeding to assist it in developing appropriate policies, rules and regulations applicable to the utilities' obligations under these provisions of the Act. The Commission sought comment on such specific RTE issues as governance, geographic scope and market access, pricing,

Furthermore, § 56-579 A 1 provides in pertinent part that "[N]o such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth without obtaining the prior approval of the Commission, as hereinafter provided."

relationships between RTE service and bundled retail service, and how to measure the success of RTE development relative to the development of retail electric competition—the final matter concerning which the Commission must report to the Virginia General Assembly on or after January 1, 2002.

The Commission received extensive responses to its May 26, 1999, Order from incumbent electric utilities, industrial customers, energy marketers, independent power producers, and others furnishing their views concerning desirable RTE structures and the role of the Commission in carrying out the legislative directives in §§ 56-577 and 56-579 of the Act. The information received in the parties' initial and reply comments was very helpful to the Commission in developing proposed regulations in this docket.

On January 11, 2000, the Commission issued an order inviting interested persons to file comments on or request a hearing concerning proposed regulations attached to that Order. Comments and requests for hearing were to be filed on or before February 11, 2000. Virginia Electric and Power Company ("Virginia Power"); AEP-Virginia ("AEP"); the Potomac Edison Company, d/b/a Allegheny Power ("Allegheny"); the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); Chaparral (Virginia), Inc. ("Chaparral"); thirteen jurisdictional electric cooperatives, Old Dominion Electric Cooperative, and the Virginia Maryland & Delaware Association of

Electric Cooperatives (filing jointly) ("the Cooperatives"); the Federal Trade Commission's Bureau of Economics; Kentucky Utilities Company, d/b/a Old Dominion Power Company ("Kentucky Utilities"); the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates (filing jointly) ("the Committee"); and Dynegy Marketing and Trade ("Dynegy") filed comments. No party requested a hearing.

In its review of the comments, the Commission noted that some of those commenting, including AEP, Virginia Power, and Kentucky Utilities, maintained that many of the proposed regulations' requirements may be preempted by federal law. Some such parties also suggested that the underlying grant of authority by the General Assembly to the Commission under §§ 56-577 and 56-579 of the Act may be preempted under federal law, or that the Commission had exceeded its authority under these provisions.

In response to those commenters suggesting that §§ 56-577 and 56-579 of the Act or the regulations promulgated thereunder are preempted by federal law, the Commission, by Order dated March 16, 2000 ("March 16 Order"), requested all parties who had filed comments in response to the Commission's January 11, 2000, Order to file briefs addressing the preemption issue. In particular, parties asserting federal preemption of the Commission's rulemaking authority were requested to provide the legal authority supporting their positions. They were also

asked to address eight issues regarding the proposed rules, the Commission's authority under the Act, and whether federal law provided the Federal Regulatory Commission ("FERC") with exclusive authority over ownership, control, acquisition or construction of transmission assets. These parties were also requested to brief whether any provision of the Federal Power Act, regulations implementing such act, or case law interpreting either, imposes an unconditional obligation on the Commission to approve, or to refrain from reviewing or conditioning, incumbent electric utilities' proposed transfer of the management, control or ownership of transmission assets to a FERC-approved Regional Transmission Organization ("RTO").²

Moreover, such parties were requested to describe, in light of any such asserted preemption, the Commission's permissible role under the Virginia Electric Utility Restructuring Act, with respect to incumbent electric utilities' transfer of transmission assets to RTEs.

Finally, on June 15, 2000, the Commission entered a further Order for Additional Notice, directing that additional notice of this proceeding be published in newspapers of circulation throughout the state on or before June 22, 2000. Such Order permitted interested parties who had neither noted an appearance in this proceeding or been included on the service list of the

² "RTO" is the FERC's preferred nomenclature for the regional transmission organization known under Virginia's Restructuring Act as an "RTE."

January 11, 2000, Order Prescribing Notice and Inviting Comments to file comments with the Clerk of the Commission by July 5, 2000. No further comments were received in response to this Order.

NOW UPON CONSIDERATION of the pleadings, comments, and briefs filed herein, we find that we should adopt the attached rules applicable to the implementation of §§ 56-577 and 56-579 of the Act, effective as of the date of this Order. A complete set of these rules is appended to this Order as Attachment A. We have carefully considered the pleadings, comments, and briefs of the parties in response to our Orders of May 26, 1999, January 11, 2000, and March 16, 2000. The analysis of these comments has been vital in crafting the rules hereby promulgated in this Order. While we will not review each rule in detail, we will comment briefly on several of them, and on the preemption issue as well.

First, we note the filing schedule established in 30 VAC 5-320-120. The date by which incumbent electric utilities must file their application with the Commission to obtain authorization to transfer transmission assets to an RTE has been established in the regulation as October 16, 2000. As Allegheny notes in its February 10, 2000, comments concerning the proposed rules, October 15, 2000, is the filing date established by the

FERC in its Order No. 2000³ for certain transmission-owning utilities to file with FERC information concerning their plans to join an RTO by January 1, 2001.⁴ We believe that synchronizing the Commission's date for filing (October 16) with that established by FERC (October 15) will be helpful to Virginia's incumbent utilities for planning purpose, and we have revised this rule accordingly.

We have also responded to several parties' requests for some flexibility in 20 VAC 5-320-100's filing requirements. The underlying rationale for this request is that certain information required under this rule will only become available as and when RTEs approach, and ultimately achieve, operational status. We have accommodated that concern in this rule by allowing utilities to advise us in their application when certain information called for is not yet available. However, the utility applicant must explain why the information is not available, describe steps taken to develop the information, and provide an estimate of the time within which it will be available.

³ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Statutes and Regulations, Regulations Preambles ¶ 31,089 ("Order No. 2000"), order on reh'g, Order No. 2000-A, 90 FERC ¶ 61,201 (Feb. 25, 2000).

⁴ Additionally, it should be noted that FERC Order No. 2000 establishes a separate January 15, 2001, filing date for those utilities who are members of an RTO that the FERC has found in compliance with FERC Order 888's Independent System Operator ("ISO") principles.

With respect to the question of potential preemption raised by Virginia Power, AEP and Kentucky Utilities, we believed it important to provide an opportunity for the parties appearing in this matter to address this issue specifically and directly. Accordingly, in our March 16 Order, we directed the parties to brief eight issues concerning potential preemption. Briefs concerning the preemption issue were filed by Virginia Power, AEP, Allegheny, Consumer Counsel, Chaparral, the Cooperatives, the Committee, and Dynegy.

The parties who contend that the proposed regulations are preempted by federal law, i.e., Virginia Power, AEP, Allegheny, and Kentucky Utilities,⁵ generally asserted that the proposed regulations, or the authority granted the Commission under the Act, is or may be preempted by federal law, depending on how the Commission "interprets" the proposed regulations or on the manner in which the Commission applies its authority under the statute or the regulations. We note that the incumbent utilities do not assert that the proposed rules are expressly preempted, but instead contend that the proposed rules or the Commission's actions pursuant to the rules are preempted on an implied basis.

⁵ These parties will be collectively referred to as the "incumbent utilities." Kentucky Utilities did not file a brief in response to the March 16 Order. However, in its earlier comments filed in response to our January 11, 2000, Order requesting comments on the regulations proposed in this docket, Kentucky Utilities commented on the preemption issue.

It is well settled that federal preemption may occur in three principal ways.⁶ First, preemption may occur when federal legislation reveals an express congressional intent to preempt state law. Second, in the absence of express preemptive language, federal legislation may manifest an intent to occupy an entire field of regulation, to the exclusion of state regulation ("field preemption"). Finally, preemption may occur when compliance with both the federal and state laws is a physical impossibility, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress ("conflict preemption").

Although the incumbent utilities do not always differentiate these types of implied preemption in their arguments, in the main their contention appears to be that the proposed rules are preempted on the basis of both field preemption and conflict preemption. First, the incumbent utilities contend that because FERC has exclusive jurisdiction over the transmission of electric energy in interstate commerce, FERC fully occupies the field of transmission regulation to the exclusion of states' review of a utility's decision to join an RTE or of any part of the transactions necessary for the utility to participate in the RTE, i.e., field preemption. Second, the incumbent utilities contend that the Commission may not

⁶ See e.g., *Louisiana Public Service Comm'n v. Federal Communications Commission*, 476 U.S. 355, 368-69 (1986).

promulgate regulations concerning the transfer of the ownership or control of transmission assets to an RTE if such regulations are inconsistent with, or more extensive than, FERC's requirements, because such requirements (i) could put utilities in the position of having to comply with conflicting state and federal requirements, and (ii) by restricting or precluding the transfer of transmission facilities to an RTE, could create an obstacle to the accomplishment and execution of FERC's objectives (i.e., conflict preemption).

Dynegy, the Consumer Counsel, the Committee, and the Cooperatives contend that neither the Act, the authority granted to the Commission under § 56-579 A 1, the regulations promulgated under § 56-579 A 2, nor the Commission's exercise of authority pursuant to the Act is preempted by federal law. Dynegy observes that becoming embroiled in a "jurisdictional analysis paralysis" could inhibit or undermine the process of developing RTEs.⁷ The Consumer Counsel states that it believes that "the authority granted to the Commission under Va. Code Ann. § 56-579 is not preempted by federal law,"⁸ and observes that FERC has given no indication that the Commission is precluded from acting pursuant to Virginia law.

⁷ Dynegy April 5, 2000, Brief at 1.

⁸ Consumer Counsel April 5, 2000, Brief at 2.

Additionally, the Committee commented on the federal-state relationship concerning RTOs described in FERC's Order No. 2000.⁹ As noted in the Committee's brief, this FERC order acknowledges the important role states play in RTO matters. The Order specifically notes that "most states must approve a utility joining an RTO, and several states have required their utilities to turn over their transmission facilities to an independent transmission operator."¹⁰ The Committee further emphasizes that FERC Order 2000 thus acknowledges such requirements as exist in Virginia under the Utility Transfers Act and under the Restructuring Act – prior approval for joining an RTO and the requirement that utilities turn over transmission facilities to an independent transmission operator – and FERC accepts these as an integral part of the RTO process.¹¹

We have reviewed and analyzed the arguments of the parties at length, and we conclude that the proposed regulations, the Commission's potential exercise of authority pursuant to the regulations, the General Assembly's grant of authority to the Commission, and the portions of the Act pertaining to RTEs are not preempted by federal law.

⁹ *Supra* in note 2.

¹⁰ Committee April 5, 2000, Brief at 7.

¹¹ Id.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt the Regulations Governing Transfer of Transmission Assets to Regional Transmission Entities, appended hereto as Attachment A.

(2) The February 14, 2000, motion of Kentucky Utilities to file comments one day out of time concerning these rules is granted, and their comments are hereby accepted for filing.

(3) The June 30, 1999, motion for leave to file comments and the April 6, 2000, motion of the Cooperatives to file one day out of time their June 30, 1999, comments, and their subsequent brief concerning the preemption issue are granted, and such comments and brief are hereby accepted for filing out of time.

(4) A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations.

Chapter 320.

REGULATIONS GOVERNING TRANSFER OF TRANSMISSION ASSETS TO REGIONAL
TRANSMISSION ENTITIES.

20 VAC 5-320-10. Applicability and scope.

These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia), and they apply to any incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth. Sections 56-577 and 56-579 of the Act require Virginia's incumbent electric utilities to (i) join or establish regional transmission entities (RTEs) by January 1, 2001, and (ii) seek the commission's authorization to transfer their transmission assets to such RTEs.

Specifically, § 56-577 of the Code of Virginia requires that on or before January 1, 2001, incumbent electric utilities owning, operating, controlling, or having entitlement to transmission capacity join or establish RTEs. The utilities are required to transfer the management and control of their transmission systems to the RTEs, subject to the provisions of § 56-579 of the Code of Virginia.

Additionally, § 56-579 provides that no incumbent electric utility shall transfer to any person any ownership, control, or operation of any portion of any transmission system within the Commonwealth without obtaining the commission's prior approval.

Finally, certain transfers of utility assets are subject to the Utilities Transfers Act (§ 56-88 et seq. of the Code of Virginia).

In short, incumbent electric utilities ~~who that~~ own, operate, control or have entitlement to transmission capacity are subject to three provisions: (i) the obligation to join or establish an RTE, (ii) the obligation to obtain commission approval before transferring ownership, control or operation to an RTE, and (iii) obligations imposed by the Utilities Transfers Act. Although these provisions are distinct, they overlap.

In the interest of administrative efficiency, the commission will utilize a single proceeding in which the utility seeks approval for a proposed transfer under § 56-579 of the Code of Virginia and under the Utilities Transfers Act. In that proceeding, the commission will determine whether (i) the RTE to which the applicant proposes to transfer ~~transmission any~~ ownership[, or] control [of,] or [any] responsibility to operate[, any portion of its transmission system] satisfies the legislative criteria set forth in § 56-579 of the Code of Virginia, and (ii) the transfer otherwise satisfies [the provisions of] § 56-579 and the Utilities Transfers Act.

Accordingly, these regulations establish:

1. The elements of regional transmission entity structures essential to the public interest, to be applied by the commission in determining whether to authorize transfer of ownership or control from an incumbent electric utility to a regional transmission entity, all as required by § 56-579 of the Code of Virginia;
2. Filing requirements for entities [that (i) are] required to comply with the mandate of § 56-577 of the Code of Virginia that certain entities join or establish regional transmission entities, and ~~seeking~~ (ii) seek] the commission's permission to transfer control, ownership[, or] responsibility

of or for transmission to a regional transmission entity pursuant to § 56-579 of the Code of Virginia and the Utilities Transfers Act; and

3. A schedule for such filings by the entities having obligations under § 56-577 of the Code of Virginia.

20 VAC 5-320-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the Virginia Electric Utility Restructuring Act.

"Commission" or "SCC" means the State Corporation Commission.

"FERC" means the Federal Energy Regulatory Commission.

"Incumbent electric utility" shall have the same meaning as set forth in § 56-576 of the Code of Virginia.

"Rate pancaking" means the practice of (i) requiring a transmission customer to pay a separate access charge each time the contract path associated with the customer's transaction crosses the boundary of another transmission owner, so as to count more than once the quantity transmitted or (ii) otherwise counting the quantity transmitted more than once in the calculation of the transmission customer's charges for transmission services, ancillary services[,] or both.

"Regional transmission entities" or "RTEs" means any individual, corporation, [cooperative,] municipality, partnership, association, company, business, trust, joint venture, or other private legal entity that may receive or has received, by transfer pursuant to this chapter, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Transmission assets" means ~~those the~~ facilities and equipment owned, operated, or controlled by incumbent electric utilities, [and] required for the transmission of electric energy. The term also includes facilities and equipment for the transmission of electric energy when incumbent electric utilities have entitlement to the transmission capacity thereof.

20 VAC 5-320-30. Elements of an appropriate regional transmission entity; general categories.

A. Section 56-579 of the Code of Virginia requires that RTEs (i) promote practices for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto, and (ii) be consistent with meeting the transmission needs of electric generation suppliers both within and without this Commonwealth.

B. Accordingly, RTEs to which any incumbent electric utility proposes to transfer its transmission assets shall satisfy commission requirements in the following five essential categories before any such transfer will be approved: (i) reliability practices, (ii) pricing and access policies, (iii) independent governance, (iv) consistency with FERC policy, and ~~[(iv)(v)]~~ fair compensation to the transferor.

20 VAC 5-320-40. ~~Reliability~~ Planning and reliability policies and] practices.

~~RTE [planning and] reliability [policies and]~~ practices shall, at a minimum:

1. Maintain short-term system reliability on an ongoing basis;
2. ~~Identify [and facilitate the addition of]~~ system enhancements needed to maintain reliability over the long term ~~[and to facilitate the addition of needed improvements]~~, to promote efficient use of the grid, and to promote the efficient development of competition in the sale of electric energy];

3. ~~[Assure- Provide assurance]~~ that ~~[the RTE has the authority to construct or to compel the construction of]~~ ~~needed transmission facilities~~ ~~[are constructed in a timely fashion, including facilities for the interconnection of generating facilities, subject to required regulatory approvals];~~

4. ~~[Assure- Provide assurance]~~ that ~~[reasonably priced connected generation facilities will provide]~~ ancillary services necessary for reliable service ~~[are available on an open access basis as a condition of transmission service from the RTE];~~

5. Serve as an information resource to reliability councils or committees, potential market entrants, consumers, the FERC[,], and state regulatory commissions;

6. Promote the construction of properly located generation facilities when such facilities represent optimal solutions for maintaining reliability ~~[and enhancing competitive markets]~~; and

7. Provide for appropriate interconnection of new ~~[or expanded]~~ generating facilities[, including the timely performance of necessary interconnection or facilities studies in cooperation with utilities].

20 VAC 5-320-50. ~~[Pricing Interconnection, pricing,]~~ and access ~~[policies and]~~ practices.

A. RTEs shall promote policies ~~[and practices for the interconnection of generating facilities and]~~ for the pricing and access for ~~[service over such systems which transmission service that]~~ are safe, reliable, efficient, not unduly discriminatory[,], and consistent with the orderly development of competition in the Commonwealth[,], as required in § 56-579 of the Code of Virginia.

B. Accordingly, such [interconnection,] pricing[,] and access policies [~~must shall~~], at a minimum:

1. Provide for efficiently priced transmission access to competing generating resources over as broad a region as possible;

2. Use transmission rates that do not discourage economic transactions, and do not encourage uneconomic transactions;

3. Be adaptable for purchasers of electricity at wholesale or at retail;

4. Provide for the efficient relief of transmission congestion through the redispatch, by direct orders or by coordination with customers and generators, of competitively priced generation on an economically efficient basis;

5. Provide for the efficient pricing of transmission transactions between different regional transmission organizations;

6. Ensure that [~~all~~ (i)] transmission[~~-related~~] decisions, including [interconnection,] pricing, access, [~~and~~] planning [~~are made,~~] and [(ii)] operational [~~decisions, procedures~~] are [~~made transparently~~] developed, openly with appropriate stakeholder input, and will not harm the development of competitive markets];

7. Provide for effective market monitoring, including serving as a resource to assist the FERC and state regulatory commissions in the identification [~~of existing market power~~] and resolution of market power abuses; [~~and~~]

8. [~~Create~~ Promote] an environment [~~which that~~] facilitates the development of an efficient generation market[~~;~~ and]

[9. ~~Promote the construction of transmission facilities to enhance competitive markets within the boundaries of the RTE.~~]

20 VAC 5-320-60. Independent governance.

A. Section 56-579 of the Act requires RTE policies that are not unduly discriminatory and that are consistent with the orderly development of competition in the Commonwealth.

B. Accordingly, RTEs shall:

1. Be governed ~~independently~~ independent] of ~~[all-generation and other]~~ competitive interests;

2. Allow their decision-makers full discretion ~~[and appropriate incentives]~~ to achieve all the policies of this chapter; and

3. Provide ~~[to such decision-makers:~~ for advisory boards with equitable stakeholder representation.

~~a. Strong, unimpeded incentives to exercise such discretion; and~~

~~b. No incentives to act inconsistently with the development of such competition.~~]

20 VAC 5-320-70. Consistency with FERC policy.

Every transfer of transmission assets by an incumbent electric ~~[utility]~~ to an RTE pursuant to this regulation shall be consistent with ~~[the all]~~ lawful requirements of the ~~[Federal Energy Regulatory Commission-(FERC)]~~ as required by the provisions of § 56-579 of the Code of Virginia. ~~[Accordingly, such transfers shall conform to:~~

- ~~1. Any final rules issued by FERC, including FERC Orders 888¹, 889, 889-A, 889-B² and 2000³; and~~
- ~~2. Any orders issued by FERC in the area of transmission rates and regional transmission arrangements.]~~

20 VAC 5-320-80. Fair compensation to transferor.

The RTE's method for acquiring control of transmission rights or assets transferred by an SCC-jurisdictional entity shall ~~[include terms that]~~ fairly compensate the transferor as specified in § 56-579 of the Code of Virginia. ~~[Such policies shall, at a minimum:~~

- ~~1. Provide for a revenue stream sufficient to provide an adequate return on investment and recovery of reasonable operating expenses; or~~
- ~~2. Provide for a purchase price that reflects an appropriate value for the sale of any transmission assets.]~~

20 VAC 5-320-90. Filing requirements; generally.

Each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, ~~[intending proposing]~~ to transfer all or part of the control, ownership, or responsibility for such transmission capacity to an RTE, shall file an application with the commission. The application shall be prepared and submitted ~~[in two principal parts as follows]~~:

- ~~1. Part II, to be filed if an applicant proposes to transfer to an RTE only [the management or control of, or responsibility for, such transmission capacity,] shall consist of prefiled testimony and supporting exhibits or schedules necessary to demonstrate that~~

the RTE to which the applicant proposes to ~~make such~~ transfer ~~such management, control, or responsibility~~ satisfies the elements set forth in this chapter ~~and all applicable statutory requirements~~].

2. Part II ~~[, to be filed in addition to Part I if an applicant also proposes to transfer ownership of such capacity to an RTE,]~~ shall consist of prefiled testimony and supporting exhibits or schedules necessary to demonstrate that the transfer of ~~such~~ transmission ownership ~~[, control or responsibility is consistent with~~ to the RTE satisfies the elements set forth in this ~~chapter and~~ all applicable statutory requirements.

20 VAC 5-320-100. Contents of incumbent ~~electric~~ utility filing, Part I.

Part I of the ~~utility~~ filing required pursuant to 20 VAC 5-320-90 shall include ~~[, at a minimum,]~~ the following ~~[(if such information is not available as of the date of the filing the application shall contain a detailed explanation as to why such information is not available, the efforts under way to develop such information, and an estimate of the time within which it will be available)]~~:

1. Copies of ~~[all agreements entered into or each agreement entered into between the RTE and member transmission owner. Copies of each draft agreement proposed]~~ to be entered into by ~~[and among]~~ the RTE ~~[, transmission owners, transmission users and other entities and any member transmission owner]~~.

2. A description of the ~~[proposed]~~ business structure of the RTE (e.g., public service corporation, limited liability company). Copies of the RTE's articles of incorporation, articles of organizations[,] or similar documentation shall be provided in conjunction with this description.

3. A detailed description of the RTE's governance, including, but not limited to[.]
explanations of the selection process for the RTE's board of directors and officers, codes of
conduct, transmission owner rights, and voting conditions.

4. A detailed description of the specific planning, operational, maintenance[.] and
other responsibilities that will be within the province of the RTE, and those that will remain
within the province of the transmission owners. Such description should specify authorities and
powers granted to the RTE. The list of responsibilities [to be] addressed [~~should include, but not~~
~~be limited to~~ shall include the following]:

- a. Construction of facilities;
- b. Dispatch and redispatch of generation;
- c. Maintenance of facilities;
- d. Decision to order line loading relief;
- e. Filing of initial tariffs at FERC;
- f. Filing of changes to tariffs at FERC;
- g. Acquisition of ownership or control of transmission facilities from
transmission-owning members of the RTE;
- h. Acquisition of ownership or control of transmission facilities from entities
[~~other than transmission-owning who are prospective~~] members of the RTE;
- i. Admission of new members;
- j. Establishment of [~~fees~~ budget];
- ~~k. — Establishment of budget;~~
- ~~[l.k.] Hiring of staff leadership;~~

~~[m.l.]~~ Planning activities for interconnecting new generating facilities;

~~[n.m.]~~ Planning activities for transmission facilities controlled by the RTE;

~~[o.n.]~~ Planning activities for transmission facilities not controlled by the RTE or distribution facilities to be interconnected with the RTE;

~~[p.o.]~~ Open access transmission tariff (~~[ATT]~~ ~~OATT~~) administration;

~~[q.p.]~~ Transmission transaction scheduling;

~~[r.q.]~~ Provision of energy imbalance services;

~~[s.r.]~~ Procurement and provision of ancillary services;

~~[t.s.]~~ Market monitoring activities;

~~[u.t.]~~ Control area or security coordination responsibilities;

~~[v.u.]~~ Calculation and posting of available transmission capacity ~~[(ATC)]~~;

~~[w.v.]~~ Dissemination of reliability-related information and coordination with reliability councils or organizations; and

~~[x.w.]~~ Coordination with generators and policies for interconnecting new generators.

5. A detailed description of [(i)] each type of transmission-related decision ~~[over which a the]~~ transmission owner will ~~[retain discretion, and the criteria the transmission apply to such discretion]~~ continue to make after the transfer ~~[to an RTE of transmission ownership, control, entitlement or responsibility to operate, and]~~ of the management and control of its transmission assets, or the responsibility to operate such assets, to an RTE, and (ii)] ~~the role, if any, that the RTE will play in the decision-making process].~~

6. A detailed description of the plans for ~~selecting the Board of Directors for the~~ RTE hiring and training the employees of the RTE].

~~[7. A detailed description of the plans for hiring and training the employees of the RTE.]~~

~~[8.7.]~~ A description of the transmission rate or rates that will be collected by the RTE, including:

a. The type of rates to be charged (e.g., zonal rates, grid-wide rates);

b. Provisions for transitioning to a particular type of rate or for modifying existing rates;

c. A statement indicating whether there will be any rate pancaking for transactions within the RTE and, if so, the following information shall be furnished:

(1) A ~~precise detailed~~ description of how ~~the rate~~ pancaking occurs, with realistic hypothetical examples,

(2) A detailed analysis of the economic effect of ~~the rate~~ pancaking on representative types of transactions affecting customers in Virginia,

(3) A statement of how long ~~the rate~~ pancaking will last,

(4) ~~An explanation of the~~ The rationale for permitting ~~the rate~~ pancaking, and

(5) A discussion of any FERC precedent relevant to determining the lawfulness or appropriateness of such ~~rate~~ pancaking, including a description of all ~~commonalities similarities~~ and differences

between the facts addressed in the FERC precedent and the facts in the RTE agreement at issue;

d. A statement indicating whether there is any charge, other than rate pancaking [~~which~~ that] is intended to recover, or has the effect of recovering, from the transmission customer, revenues [~~which~~ that] one or more transmission owners would no longer receive as a result of the elimination of pancaked rates, and, if so, the following information shall be furnished:

- (1) A [~~precise~~ detailed] description of how such charge operates, with realistic hypothetical examples,
- (2) A detailed analysis of the economic effect of such charge on representative types of transactions affecting customers in Virginia,
- (3) A statement of how long such charge will last,
- (4) An explanation of the rationale for permitting the charge, and
- (5) A discussion of any FERC precedent relevant to determining the lawfulness or appropriateness of such charge, including a description of all [~~commonalities~~ similarities] and differences between the facts addressed in the FERC precedent and the facts in the RTE agreement at issue;

e. A schedule comparing and contrasting the RTE's [~~expected~~] transmission charges and resulting RTE revenues with embedded retail transmission charges for each of the utility's Virginia jurisdictional rate classes;

f. An explanation of any special ~~[performance incentives or innovative transmission rates or charges]~~;

g. An explanation of the ~~[expected]~~ transmission pricing ~~[provisions]~~ applicable to transmission transactions with other regional transmission organizations; and

h. An explanation of the transmission pricing applicable to wheel-in, wheel-out, drive-through, and drive-within transactions.

~~[9.8.]~~ A detailed description of any complaint and dispute resolution procedure.

~~[10.9.]~~ A detailed description of the facilities that will be subject to the RTE's control and/or that will be transferred to the RTE. Such description shall specify (i) whether the basis for determining ~~[which the]~~ facilities ~~[are]~~ to be transferred is FERC's seven factor test set forth in FERC Order 888^{4 1} or some other method, (ii) how such test or method was applied, (iii) whether and how frequently such test will [be] reviewed and revisited, and (iv) who, as between the RTE and the owners, will require such review and any subsequent transfer made necessary by such review.

~~[11.10.]~~ A detailed discussion of generation markets or hubs within the RTE and within one wheel of the RTE. Such discussion shall:

a. Compare and contrast historical and expected average prices in these markets with embedded generation charges for each of the utility's Virginia jurisdictional rate classes; ~~[and]~~

b. Describe how the proposed RTE will promote improved access to each of these markets; ~~[and]~~

c. Describe the current and projected transmission capability between these markets and the utility.

[42.11.] If an application to form an RTE already has been submitted to FERC, the filing shall include:

a. A copy of the application to the FERC (including applications made under § 203 and §§ 205 or 206 of the Federal Power Act [,² and all amendments thereto]); and

b. Any pleadings and orders [issues issued] in such FERC case;

[43.12.] If the FERC has approved or conditionally approved the RTE, [(i) provide a copy of the FERC order, and (ii)] describe any conditions or requirements imposed on the RTE and the RTE's plans for satisfying such conditions.

[44.13.] A detailed description of the RTE's experience in grid management. If the RTE is a new entity, describe the qualifications and/or personnel requirements for [the] principal RTE employees who will be engaged in the management and operation of transmission facilities controlled by the RTE.

~~[45. A detailed statement of how the proposed RTE will comply with each of the elements set forth in this section.]~~

~~[46.14.] A detailed explanation of why the particular RTE was selected [instead of other existing or possible RTEs, including an assessment of how any such alternative RTEs satisfy the required RTE elements set forth in this chapter from among the alternatives reasonably available to the applicant].~~ Such statements should include assessments of the financial and technical abilities of the proposed RTE as contrasted with ~~[such]~~ alternative RTEs.

[Such technical assessment shall identify the current and projected transmission capability between the RTE and the utility for each RTE alternative.]

[15. A detailed description of the role and composition of the RTE's stakeholder advisory board or boards.]

20 VAC 5-320-110. Contents of incumbent [electric] utility filing, Part II.

Part II of the [utility] filing required pursuant to 20 VAC 5-320-90 shall include, at a minimum, the following:

1. A copy of the transaction agreement signed by an appropriate utility official.
2. A description of the proposed transfer and the terms and conditions of the transaction to include historical and current use of [the] property, proposed use of [the] property, original cost of the property, current net book cost of the property, proposed sales price of the property and the method of determining the price, and the proposed accounting treatment of the transaction as well as current recording on company's books of record.
3. Assurances that adequate service to the public at just and reasonable rates will not be impaired by the proposed transfer.
4. [~~If an actual sale of the facility is proposed~~ Other details of the sale, such as]:
 - a. A showing that the sales price was or will be determined at arms-length;
 - b. A description of whether the purchase price is at book cost, market value[,] or some other measure;
 - c. A description of how the proceeds from the sale will be used;

d. A schedule of plant, book depreciation, and contributed property related to the assets to be transferred up to the current date;

e. An analysis of the anticipated impact of the transfer on the regulated company's rates and service, capital structure, and access to capital and financial markets, including copies of any pertinent published financial reports.

5. Discussion of favorable and unfavorable economic impacts on the Commonwealth of Virginia to include employee levels, facilities, and services provided.

6. Anticipated impact of the transfer on competition and market power.

30 VAC 5-320-120. Filing schedule.

Each incumbent electric utility required to obtain commission authorization for the transfer of its transmission assets to an RTE shall file the application required by 20 VAC 5-320-90 with the clerk of the commission not later than [May 1, October 16], 2000.

[30 VAC 5-320-130. Waivers.

Requests for waivers of any of the provisions of this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission deems appropriate in the public interest.]

[⁺Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888), order on reh'g, Order No. 888 A, 62 FR 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997) (Order No. 888 A), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888 C, 82 FERC ¶ 61,046 (1998), appeal docketed, Transmission Access Policy Study Group, et al. v. FERC, Nos. 97-1715 et al. (D.C. Cir.);

² ~~Open Access Same Time Information System (Formerly Real Time Information Networks) and Standards of Conduct, Order No. 889, 61 FR 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), order on reh'g, Order No. 889-A, 62 FR 12,484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997), order on reh'g, Order No. 889-B, 81 FERC ¶ 61,253 (1997).~~

³ ~~Regional Transmission Organizations, Order No. 2000, 65 FR 810 (Dec. ____, 2000), FERC Stats. & Regs. ¶ ____ (2,000), reh'g pending.~~

⁴ ~~See supra,, note 1.]~~

[¹ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888), order on reh'g, Order No. 888-A, 62 FR 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997) (Order No. 888-A), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd., Transmission Access Policy Study Group, et al. v. FERC, 2000 WL 762706 D.C. Cir. (June 30, 2000).

² 16 U.S.C. §§ 824b, 824d, and 824e.]